

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

The foregoing amendments do not require additional search nor raise new issues, rather are to place the present application in condition for allowance. Accordingly, Applicants respectfully request the entry of the foregoing amendment.

I. AMENDMENT TO THE SPECIFICATION

In the specification, one paragraph on page 65 has been amended. The amendment corrects a typographic error in the name assigned to the disclosed structure of compound 082. Support for the change can be found in the corresponding disclosed structure.

II. STATUS OF THE CLAIMS

Claims 1-54, 61, 65, and 73-77 are requested to be canceled.

Claims 62-64, 66-69, 79, 83, 85-86, 88-89, 91, 94-97 are currently amended.

No claims are being added.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 62-64, 66-72, and 78-97 are now under examination in this application.

III. ELECTION/RESTRICTION REQUIREMENT

The Office acknowledged that modified group II which was elected for examination embraces the elected species exemplified as compound 080. The restriction requirement was made final. Office Action, page 2-3.

IV. REJECTIONS UNDER 35 U.S.C. § 103

The Office acknowledged that the Declarations under 37 CFR 1.132 filed on February 27, 2007 and September 10, 2007 are sufficient to overcome the rejection of the instant claims based upon obviousness under 35 U.S.C. §103 over the Lago, Dexter, Illig, and Dhanoa. (Office Action, pages 3-4.)

V. REJECTIONS UNDER 35 U.S.C. § 112

A. Claims 67, 83, and 94

The Office rejected claims 67, 83 and 94, under § 112 first paragraph, for alleged lack of descriptive support. (Office Action, pages 4-5.)

Specifically, in claims 67 and 83, Applicants have deleted “CN” and “NO₂” from R⁶’s definition without disclaimer or prejudice solely for advancing the prosecution of the application. Accordingly, the corresponding compound 117 is deleted from dependent claim 86 and moved to claim 97; and claim 79 is amended to remove its dependency on claim 67.

In claim 94, Applicants have amended “nitrogen group” to “basic nitrogen functionality”. Please see detailed discussion in section B.

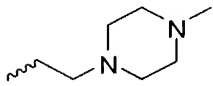
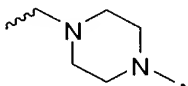
The above amendments render moot the rejections for lack of descriptive support. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections on this ground.

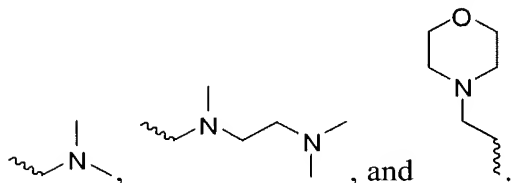
B. Claims 62-64, 66-72, and 78-96

The Office rejected claims 62-64, 66-72, and 78-96 under 35 U.S.C. §112, second paragraph, as being indefinite. (Office Action, page 6.)

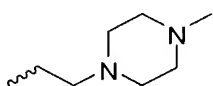
The focus is on the expression “pendant basic nitrogen functionality”.

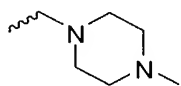
The Office expressed concern over this expression with respect to how to determine the basicity, the way of attachment, and structural information. (Office Action, page 7.) The Office pointed to exemplary substituents which are substituted with a “basic nitrogen functionality” as shown in structures *a* to *f* in the specification for the structural depiction. (Office Action, page 11, 1st paragraph, and Office Action dated August 22, 2005, page 12, 2nd full paragraph.)

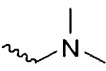
Applicants have amended the instant claims to limit the expression “a pendant basic nitrogen functionality” to a Markush group consisting of , ,

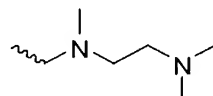


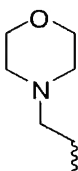
The support for this recitation can be found in the generic description in formulae *a* to *f* as well as exemplary compounds respectively listed below.

Support for  as substituents in the instant claims can be found formula *d*, compounds 002, 003, 004, 005, 006, 008, 027, 110, 116, 117, 124, 108, 113, 066, 067, 074, 075, 076, 077, 078, 079, 080, 081, 082, 084, 085, 122, 111, and 118.

Support for  as substituent in the instant claims can be found in formula *c*, compounds 060 and 089.

Support for  as substituent in the instant claims can be found in formulae *b* and *e*, compounds 022, 047, 0219, and 088.

Support for  as substituent in the instant claims can be found in formula *f*.

Support for  as substituent in the instant claims can be found in compounds 052, 069, 087, and 096.

Applicants respectfully submit that the generic description as well as the embodiments provides sufficient support for the limited generic claim. This amendment provides clear structural information of the pendant basic nitrogen functionality in the instant claims,

therefore sets metes and bounds which can be readily ascertained by one skilled in the art without undue experimentation. Specific compounds which are not encompassed by such definition are deleted from claim 86 and moved to claim 97 accordingly.

Applicants respectfully request the reconsideration and withdrawal of the rejections on this ground. Of course, Applicants made the amendment without prejudice and disclaimer solely for advancing the present application in to allowance. They reserve the right to file a continuing application where the issue will be further addressed.

C. Claims 63 and 64

The Office found unclear whether the –COR group and the –CONRR’ group are defining R’’ or R in claims 63 and 64. (Office Action, page 8.) Applicants have amended the instant claims to clarify that –COR’ (not –COR) group and the –CONR’R’’ (not –CONRR’) are defining R instead of R’’ as in –SO₂-R’’. Other claims having similar recitation are similarly amended.

Applicants respectfully request the reconsideration and withdrawal of the rejections on this ground.

D. Claims 69, 83, 86, 89, and 95-96

The Office pointed out a few instances in the instant claims where the words “or” and “and” should be added and punctuation should be corrected. Applicants have amended these claims to comply with the Office’s requirement, therefore they respectfully request the reconsideration and withdrawal of the rejections on this ground.

E. Claim 86

The Office asserted that compounds 003 and 094, for instance, lack antecedent basis from claim 83. (Office Action, page 8).

Applicants have amended claim 86 to delete compound 003, 094, and other compounds which the Office may consider lack of antecedent basis and moved them to claim 97.

Applicants therefore respectfully request the reconsideration and withdrawal of the rejections on this ground.

V. THE DOUBLE PATENTING REJECTIONS

The Office has provisionally rejected claims 62-64, 66-72, and 78-97 over claims 1-22 of the co-pending application 11/779,633 and over claims 31-32 of co-pending application 10/567,557 under the doctrine of obviousness-type double patenting. (Office Action, page 14)

MPEP 804.I.B.1 provides:

If “provisional” ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed applications thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue.

Applicants submit herewith a terminal disclaimer complied with 37 C.F.R. 3.73(b), which obviates the double patenting rejection over claims 1-22 of the co-pending application 11/779,633 which claims benefit of PCT/IB2003/003685 filed on July 31, 2003.

Applicants decline to file a terminal disclaimer regarding claims 31-32 of co-pending application 10/567,557. The ‘557 application claims benefit of PCT/IB2004/002934 filed on August 16, 2004. Thus, the present application 10/632,101 filed on August 1, 2003 is an earlier filed application. The Office should withdraw the obvious-type double patenting rejections in the present application if the provisional rejection in the application is the only rejection remaining. MPEP 804 I.B.1.

Applicants respectfully request the reconsideration and withdrawal of the rejections on this ground.

CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

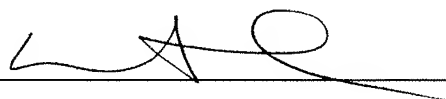
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment,

to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: 29-FEB-2008

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4059
Facsimile: (202) 672-5399

Rouget F. Henschel
Attorney for Applicants
Registration No. 39,221